IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7180 of 2005

For Approval and Signature:

THE HON'BLE MR.JUSTICE SHARAD D.DAVE

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MOHANSING AMARSING CHAUHAN - Petitioner(s)

Versus

STATE OF GUJARAT &3 - Respondent(s)

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Appearance :

MS SUBHADRA G PATEL for Petitioner No(s).: 1.
RULE SERVED for Respondent No(s).: 1,2.
MR PD BHATE, AGP for Respondent No(s).: 3.

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CORAM :THE HON'BLE MR.JUSTICE SHARAD D.DAVE

Date : 15/06/2005

ORAL JUDGMENT

1.By filing this petition, the petitioner detenu has challenged the detention order dated 11.1.2005 passed by the Police Commissioner, Rajkot City in exercise of the powers conferred upon him under sub-section (1) of Section 3 of the Gujarat Prevention Anti-social Activities Act, 1985 (“the Act” for short), as, the Detaining Authority found that the detenu is a “dangerous person” and is required to be detained under the preventive detention, so that, he may not continue with such type of illegal activities.

2.Along with the detention order, the detenu was also served with the grounds of detention of the same date. In the said grounds, there is a reference to three criminal cases which are filed under the provisions of Indian Penal Code. In the grounds of detention, the statements of certain witnesses have been recorded.

3.At the time of hearing of this petition, it is argued by the learned advocate for the petitioner that the petitioner was in judicial custody at the time of passing the detention order dated 11.1.2005 and there is no material with the detaining authority to come to the

conclusion that after releasing from the offence in question, the petitioner will indulge in the same activities, and, therefore there is non-application of mind. Ms.Patel has placed reliance on the decision of this Court in Special Civil Application No.4908 of 2005 delivered on 20.4.2005. It is, therefore, requested to quash and set aside the impugned detention order.

4. On the other-hand, Mr.Bhate, learned AGP has tried to support the impugned detention order passed against the petitioner.

5. Considering the facts and circumstances of the case and considering the judgment referred to above, in my view, it is clear that the petitioner was in judicial custody in all three cases registered against him when the order of detention came to be passed upon the petitioner on 11.1.2005. In fact, the petitioner was arrested on 2.1.2005 in connection with the offence at serial No.1 mentioned in the grounds of detention and thereafter he was arrested in other offences also. It is, therefore, clear that the petitioner was in judicial custody right from 2.1.2005 till the detention order is passed on 11.2005. It is to be noted here that the detaining authority has reached to the subjective satisfaction that though the petitioner was in judicial custody when the order of detention was passed, but he was likely to file the bail application in all three cases and was likely to be released on bail. The detaining authority also came to the conclusion that the petitioner was likely to continue with his illegal activities if he is released on bail. It is now well settled law that there must be cogent materials before the detaining authority that the detenu was likely to be released on bail. The Apex Court in the case of Amritlal and other Vs. Union Government through Secretary, Ministry of Finance and others, reported in AIR 2000 (1) SC 3675 has made it clear that the filing of the application for bail is not itself a cogent material to infer that the detenu was likely to be released on bail. Therefore, subjective satisfaction arrived at by the detaining authority is not based on any materials placed before the detaining authority let alone any cogent material. In that view of the matter, the subjective satisfaction arrived at by the detaining authority is vitiated, and, therefore, the order of detention is required to be quashed and set aside.

6. In view of what is stated above, the petition is allowed. The order of detention dated 11.1.2005 is quashed and set aside. The detenu Mohansing Amarsing Chauhan is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly.

(SHARAD D DAVE, J)

srilatha